

Chapter 8

HOUSING*

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State Law References: Authority to establish ordinances and make and annex penalties, RSA 47:17; adopt housing standards, RSA 48-A:2 et seq.; investigation of dwellings, RSA 48-A:8; generate administrative warrants, RSA 595-B et seq.

ARTICLE I. IN GENERAL

Sec. 8-1. Short Title.

This chapter shall be known and shall be cited as the “Housing Code of the City of Berlin, New Hampshire.”

Sec. 8-2. Statement of Purpose.

In accordance with RSA 48-A:1 et seq., the city does hereby establish minimum standards governing the condition and maintenance of dwellings by adopting the *International Property Maintenance Code, 2000 edition*; minimum standards governing supplied utilities and facilities and other physical items and conditions essential to make dwellings safe, sanitary, and fit for human habitation; minimum standards governing the condition of dwellings offered for rent; defining certain responsibilities and duties of owners and occupants of dwellings; authorize the inspection of dwellings and the condemnation of dwellings unfit for human habitation and citing penalties for violations. (Code 1977, § 13:200)

Secs. 8-3--8-15. Reserved.

ARTICLE II. HOUSING CODE*

DIVISION 1. GENERALLY

Sec. 8-16 Definitions.

In the interpretation and enforcement of this article, all words other than those defined specifically below shall have the meanings implied by their context in the ordinance or the ordinarily accepted meanings. For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

Accessory Structure. A building, the use of which is incidental and secondary (albeit related) to that of the main building and which is located on the same lot.

Basement. The portion of a dwelling located partly underground, but having less than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Bathroom. A room containing plumbing fixtures including (1) a toilet, (2) a sink, (3) a bathtub and/or shower.

Board. The City’s Housing Board of Appeals.

Building. Any structure, framework or housing, public or private, excluding single family dwellings and multi-unit dwellings as defined elsewhere in Section 8-16, but including tanks, receptacles and containers for the storage of commodities or other materials. (RSA 153:1-II)

Building Code. The building code of the city.

Cellar. The portion of a dwelling located partly or wholly underground, and having half or more than half of its clear floor-to-ceiling height below the average grade of the adjoining ground.

Certificate of Compliance. A document issued by the Code Enforcement Division attesting that the designated dwelling, dwelling unit, or rooming house on inspection was found to be in compliance with this chapter. Certificates shall contain information including a description of the rental unit, the expiration date of the certificate, reapplication, reinspection and renewal requirements.

Certificate of Occupancy. The certificate issued by the code official which permits the use of a building in accordance with the approved plans and specifications and which certifies compliance with the provisions of law for use and occupancy of the building in its several parts together with any special stipulations or conditions of the building permit.

City. The City of Berlin, New Hampshire, including its departments, agencies, officers and representatives.

Code Enforcement Officer. The official or designee who is charged with the administration and enforcement of the housing code.

Code Official. The official or designee who is charged with the administration and enforcement of the housing code.

Condemn. To determine unfit for occupancy.

Condominium Unit. A dwelling unit (whether as part of a multi-unit dwelling or as a stand-alone structure) located on a lot having other such dwellings, together with the undivided interest in the common area pertaining to that unit.

Crosswiring. The condition where all or part of the electric service for one dwelling unit is connected to or paid for through the electric meter that serves another dwelling unit.

Dilapidated. No longer adequate for the purpose or use for which it was originally intended.

Division. A section of the City's organization that has a particular task or function.

Dwelling. Any structure, trailer, mobile home or camp or part thereof, used and occupied for human habitation or intended to be so used and includes any appurtenances.

Dwelling unit. A single unit providing complete and independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking, and sanitation. (RSA 153:1, III)

Exit. That portion of a means of egress that is separated from all other spaces of a building or structure by construction or equipment as required providing a protected way of travel to the exit discharge.

Exit Access. That portion of a means of egress that leads to an exit.

Exit Discharge. That portion of a means of egress between the termination of an exit and a public way.

Exitway. See exit definitions above.

Exterior Property Areas. The open space on the premises and on adjoining property under the control of owners or operators of such premises.

Extermination. The control and elimination of insects, rodents, or other pests by eliminating their harborage places; by removing or making inaccessible materials that may serve as their food; by poisoning, spraying, fumigating, trapping; or by any other recognized and legal pest elimination methods approved by the Health Officer.

Garbage. The animal and vegetable waste resulting from the handling, preparation, cooking, and consumption of food.

Hazardous Structure. Any building which because of inadequate maintenance, dilapidation, physical damage, unsanitary condition, or abandonment, constitutes a fire hazard or a hazard to public safety or health.

Health Officer shall mean the legally designated health authority of the city or his/her designee.

Housing Code. The Housing Code of the City

Infestation. The presence (or the evidence of such) within or around a dwelling, of any insects, rodents, or other pests.

Interim Certificate of Compliance. A document issued by the Code Enforcement Division authorizing the owner to rent, offer for rent, or allow the occupancy of the designated dwelling, dwelling unit, or rooming house for a specified term pending further action. Permits shall be prepared by the Code Enforcement Division and shall contain information required by the Division including a description of the rental unit in question, the expiration date of the permit and requirements as to application, inspections, and Certificates of Compliance.

Lead-Based Paint. Any paint containing more lead than the level established by the U.S. Consumer Product Safety Commission as being the safe level of lead in residential paint and paint products.

Let for Occupancy or Let. To permit, provide or offer possession or occupancy of a dwelling, dwelling unit, rooming unit, premise or structure by a person who is or is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement of contract for the sale of land.

Litter. All waste products, paper, cans, bottles, glass, rubbish, refuse, garbage, trash debris, animal carcasses, organic waste or other discarded materials of every kind and description, whether solid, liquid or gaseous.

Lot. An area of land that has fixed boundaries, shall include the words “plot” and “parcel”.

Maintenance – Acts of repair and other acts to prevent a decline in the condition of grounds, structures, and equipment, such that the condition does not fall below the standards established by this code and other statutes, codes and ordinances.

Means of Egress. A continuous and unobstructed way of travel from any point in a building or structure to a public way consisting of three separate and distinct parts: (1) exit access, (2) the exit, and (3) the exit discharge.

Multi-Family. Three (3) or more dwelling units within one structure.

Multi-unit dwelling. Any structure not defined in “buildings”, which contains three (3) or more single units which provide permanent or transient living facilities which may or may not include cooking and eating facilities, for one or more persons. This term shall include but not be limited to: rooming houses, dormitories, motels, hotels, apartment buildings, buildings which contain condominium units, duplexes, and houses; provided, however, that such buildings contain three (3) or more units. (RSA 153:1, VI)
(Exceptions are: hospitals, nursing homes, board and care facilities and prisons)

Occupancy. The purpose for which a building or portion thereof is utilized or occupied.

Occupant. Any person over one (1) year of age including an owner or operator, living, sleeping, cooking, or eating in, or having actual possession of, a dwelling unit or rooming unit.

Operator. Any person having charge, care, management, or control of any premises, dwelling or part of it, in which dwelling units or rooming units are let.

Ordinary winter conditions shall mean minus twenty (-20) degrees Fahrenheit.

Owner. Any person, agent, operator, firm or corporation having a legal or equitable interest in the property; or recorded in the official records of the state, county or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by court.

Parcel. See Lot

Person. An individual, corporation, partnership or any other group acting as an entity.

Plot. See Lot

Plumbing shall mean and include all of the following supplied facilities and equipment: Gas pipes, gas-burning equipment, water heating facilities, water pipes, garbage disposal units, waste pipes, water closets, sinks, installed dishwashers, lavatories, bathtubs, shower baths, installed clothes-washing machines or other similar equipment, catch basins, drains, vents, and any other similar supplied fixtures, together with all connections to water, sewer, vent or gas lines.

Portable heaters shall mean any heating device that is not attached to a flue.

Premises shall mean a lot, plot, or parcel of land including the buildings and structures thereon.

Public agency shall mean any enforcement department of the City of Berlin.

Public Nuisance. See section 8-104.

Renovation. A building and its facilities made to conform to present day minimum standards of sanitation, fire and life safety.

Rental Property. Any dwelling unit in a building, dwelling, or rooming house which provided permanent or transient living facilities and occupied by tenants on a rental basis. This term shall include, but not be limited to, hotels, motels, and dormitories so long as they are offered for rent or allowed to be occupied by others.

Rooming house shall mean any dwelling (or that part of any dwelling) containing one (1) or more rooming units in which space is let by the owner or operator to three (3) or more persons who are not husband or wife, son, daughter, mother, father, sister, brother, stepchild, grandparent or grandchild of the owner or operator.

Rooming Unit or Habitable Room. A room or enclosed floor space which is designed for or may be used for year-round living, sleeping, eating, or cooking which either physically includes a bathroom or has unimpeded access to a bathroom. Storerooms, bathrooms, toilets, closets, halls, or spaces in attics or spaces in basements are not *Rooming Units* except as permitted in this chapter.

Rubbish. Combustible and non-combustible waste materials, except garbage; the term shall include the residue from the burning of wood, coal, coke, and other combustible materials, paper, rags, cartons, boxes, wood, excelsior, rubber, leather, tree branches, yard trimmings, tin cans, metals, mineral matter, glass, crockery, dust and other similar materials.

Smoke Alarm Device. A wall- or ceiling-mounted assembly containing an ionization chamber or photoelectric type of smoke detector, control equipment, and audible alarm in one unit which detects visible or invisible particles of combustion and which, upon detection of smoke, activates the alarm; which device is listed by a nationally recognized laboratory that maintains periodic inspections of the list equipment where produced, and whose listing states either that the equipment meets nationally recognized standards or that the equipment has been tested and found suitable for use in a specified manner. Every Single Family Dwelling which is built or substantially rehabilitated after January 1, 1982, shall be equipped with an automatic fire warning device. In buildings constructed or renovated after 1987, devices must be powered by house electricity, have a battery back-up and listed by a testing laboratory approved by the state fire marshal. (Chapter Saf-C 6000 STATE FIRE CODE) Existing buildings constructed or renovated prior to 1987, one and two family dwelling units, approved smoke alarms powered by batteries will be permitted. (NFPA 72 (2002) Section 11.5.1.1)

Special Inspections. Any requested inspection which is not a part of the city's regular inspection program.

Structure. Assembly of materials forming a construction for occupancy or use, including among others, buildings, stadiums, tents, reviewing stands, platforms, staging, observation towers, radio towers, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, and display signs or a portion thereof.

Temporary housing shall mean any tent, trailer, or other structure used for human shelter which is designed to be transportable and which is not attached to the ground, to another structure, or to any utilities system.

Tenant. A person, corporation, partnership or group, whether or not the legal owner of record, occupying a structure or a portion thereof as a unit.

Toilet Room. A room containing a toilet, water closet or urinal but not a bathtub or shower.

Two-family dwelling shall mean any dwelling containing two (2) dwelling units.

Unfit dwelling is any dwelling which has become or is so dilapidated, decayed, unsafe, unsanitary, or which fails to provide the amenities essential to decent living, or which could cause sickness or disease, or injure the health, morals, safety, or general welfare of those living therein.

Vacant. Empty or not occupied on a regular basis by an occupant, or not used by a person on a regular basis for the usual and customary purposes for which a building is designed and lawfully permitted.

Ventilation. The process of supplying and removing air by natural or mechanical means to or from any space:

(a) *Mechanical:* ventilation by power-driven devices.

(b) *Natural:* ventilation by opening to outer air, through windows, skylights, doors, louvers, or stack wind driven devices.

Workmanlike. An action, such as maintenance or repair, performed in a reasonable skillful manner for the industry or trade involved.

Yard. An open unoccupied space on the same lot with a structure extending along the entire length of the street, or rear or interior lot line

Sec. 8-17. Adoption of Maintenance Code

The *International Property Maintenance Code*, 2000 edition, as published by the International Code Council Inc., is hereby adopted by reference and as amended in Section 8-151 as part of the minimum standards and practices and be known as part of the *Housing Code* for the City of Berlin.

Sec. 8-18. Amendments.

Prior to acting on any amendment to this ordinance, the city council shall hold a public hearing on such proposed amendment and shall refer such proposed amendment to the Berlin Housing Authority and Housing Board of Appeals for an advisory report at least ten (10) days prior to the public hearing. (Code 1977, § 13:209)

Sec. 8-19. Conflict of ordinances.

This article shall not interfere with or annul any ordinance, rule, regulation, permit or any other more restrictive code, provided that, unless specifically excepted, where this article is more stringent it shall control. (Code 1977, § 13:210)

Secs. 8-20--8-35. Reserved.

* **Cross References:** Buildings and building regulations, Ch. 4.
State Law References: Housing standards, supplemental provisions, RSA 48-A: 1 et seq.

DIVISION 2. HOUSING BOARD OF APPEALS*

Sec. 8-36. Board Membership and Terms.

There is hereby created and established a Housing Board of Appeals (the Board) to perform the duties indicated by the procedures prescribed in this article and otherwise as may be provided in a manner consistent with this article or by-laws of the board. The Board shall consist of five (5) members at large, appointed by the Mayor, subject to confirmation by the City Council, namely: one (1) a member-at-large, one (1) a builder/contractor, one (1) a tenant, one (1) a landlord, and one (1) a Commissioner of the Berlin Housing Authority. Such members shall be residents of the city and shall serve without compensation. When the board is first organized, the members shall serve the following terms: One (1) member to serve for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years; full-term appointments thereafter shall be for five (5) years. The Mayor shall appoint two (2) alternate members to act whenever any member is unable to act because of interest, physical incapacity, or absence from the state. Any vacancy occurring in the membership of the board shall be filled by the Mayor, subject to confirmation by the City Council, for the unexpired remainder of the term. The members shall be removed by the appointing authority for conduct unbecoming of the position after a public hearing. The board shall adopt rules in accordance with the provisions of this article. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Such chairman, or in his/her absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and records of the Board shall be subject to RSA 91-A. (Code 1977, § 13:205.1)

Sec. 8-37. Rules of order.

The rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the board. The presence of three (3) members shall constitute a quorum. No member of the Board shall sit upon the hearing of any question which the board is to decide in a judicial capacity who would be disqualified from any case to act as a juror upon the trial of the same matter in any action at law. If a member shall be disqualified or unable to act in any particular case pending before the Board, the chairman shall appoint an alternate member to act in place upon such case. (Code 1977, § 13:205.2)

Secs. 8-38--8-55. Reserved.

* **Cross References:** Boards, committees and commissions, § 2-41 et seq.

DIVISION 3. ADMINISTRATION AND ENFORCEMENT*

Sec. 8-56. Access by Fire Chief, Health Officer, Code Enforcement Officer or City Manager.

In order to carry out the purpose and provisions of the Housing Code, the Fire Chief, Health Officer, Code Enforcement Officer, City Manager and/or their designees are hereby authorized to enter the premise for the purpose of making examinations; provided that such entries shall be made in such a manner as to cause the least possible inconvenience to the tenant(s), and provided further that such entries shall not be made unless notification is given. Such inspection shall be made at reasonable times and only after the owner or occupant is notified by mail of the date (no less than three (3) days after mailing) and the time of the inspection.

The owner, occupants or persons in charge of such premises shall give the Fire Chief, Health Officer, Code Enforcement Officer, City Manager and/or their designees free access to such premises. In the event that such entry is denied or resisted, the enforcing authority shall obtain, under RSA 48-A: 8 and RSA 595-B, an order from a court of competent jurisdiction for the purpose of making such entry.

Sec. 8-57. Identification of inspector.

The Fire Chief, Health Officer, Code Enforcement Officer, City Manager and/or their designees shall display official identification prior to any demand for entry. (Code 1977, § 13:203.4)

Sec. 8-58. Method of enforcement.

If the Fire Chief, Health Officer, Code Enforcement Officer, City Manager and/or their designees shall find a dwelling or premises to be in a state of noncompliance and/or violation of any provision of this article, they shall follow the enforcement steps outlined in Section 8-142 or Chapter 18, Code Enforcement, of the City's ordinances.

Sec. 8-59. Access by owner or operator.

Every occupant of a dwelling, rooming house, dwelling unit or rooming unit shall give the owner or operator thereof, or his/her agent or employee, access to any part of such dwelling, rooming house, dwelling unit or rooming unit, or its premises, at all reasonable times for the purpose of making repairs or alterations necessary to comply with the provisions of this article or with any lawful notice or order issued pursuant to the provisions of this article. (Code 1977, § 13:203.3)

Sec. 8-60. Rooming houses.

No person shall operate a rooming house, or shall occupy or let to another for occupancy any rooming unit in any rooming house, except in compliance with the provisions of every section of this article.

Sec. 8-60.1 Permit.

No person shall operate a rooming house unless he/she obtains a valid rooming house permit issued by the Health Officer in the name of the operator and for the specific dwelling, dwelling unit, rooming house or rooming unit. The operator shall apply to the Health Officer or code enforcement office for such permit, which shall be issued by the Health Officer upon compliance by the operator with the applicable provisions of this article. This permit shall be displayed in a conspicuous place within the rooming house, at all times. No such permit shall be transferable. Every person holding such permit shall give notice in writing to the Health Officer within twenty-four (24) hours after having sold, transferred, given away, or otherwise disposed of ownership of, interest in, or control of any rooming house. Such notice shall include the name and address of the person succeeding to the ownership or control of such rooming house. Each rooming house permit shall expire at the end of one (1) year following its date of issuance, unless suspended or revoked as hereinafter provided.

Sec. 8-60.2. Hearing on Denial of Permit.

Any person whose application for a permit to operate a rooming house has been denied may request and shall be granted a hearing on the matter before the Board under the procedure provided by section 8-72 et seq.

Sec. 8-60.3. Inspection.

Whenever upon inspection of any rooming house, the Health Officer finds that conditions or practices exist which are in violation of any provisions of this article, the Health Officer shall give notice in writing to the operator of such rooming house that unless such conditions or practices are corrected within a reasonable period, to be determined by the Health Officer, the operator's rooming house permit shall be suspended. At the end of such period, the Health Officer shall reinspect such rooming house, and if he/she finds that such conditions or practices have not been corrected, he/she shall give notice in writing to the operator that the permit has been suspended. Upon receipt of notice of suspension, such operator shall immediately cease operation of such rooming house, and no person shall occupy for sleeping or living purposes any rooming unit therein.

Sec. 8-60.4. Suspension of Permit.

Any person whose permit to operate a rooming house has been suspended, or who has received notice from the Health Officer that their permit is to be suspended unless existing conditions or practices at their rooming house are corrected, may request and shall be granted a hearing on the matter before the Board under the procedure provided by section 8-72 et seq.; provided that if no petition for such hearing is filed within ten (10) days following the day on which such permit was suspended, such permit shall be deemed to have been automatically revoked.

Sec. 8-60.5. Hotels and Motels

Every provision of this article which applies to rooming houses shall also apply to hotels and motels, except to the extent that any such provision may be found in conflict with the statutes of this state or with the lawful regulations of any state board or agency. (Code 1977, § 13:207)

Sec. 8-61. Petition to Board.

Any person aggrieved by an order of the Fire Chief, Health Officer, Code Enforcement Officer, City Manager and/or their designees may file an appeal within ten (10) days from the date of such order to the Board. The Board may, by a majority vote of those members in attendance, reverse the decision of the Fire Chief, Health Officer, Code Enforcement Officer, City Manager or their designees and permit exceptions or variations from the specific terms of this article in such cases where the enforcement of the provisions of this article may result in undue hardship, subject always to the rule that the Board shall give due consideration to the purposes of this article in promoting health, safety, and general welfare. (Code 1977, § 13:204.6)

Sec. 8-62. Appeal to court.

Within thirty (30) days after the Board has given the appellant notice of its decision, as provided by this article, such appellant or any person aggrieved by such decisions may appeal by petition to the superior court. Upon the hearing before the court the burden of proof shall be upon the party seeking to set aside any order or decision of the Board to show that the same is unreasonable or unlawful, and all findings of the Board upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated, except for errors of law, unless the court is persuaded by the balance of probabilities, on the evidence before it, that such order or decision is unjust or unreasonable.

Sec. 8-63. Vacating premises for health menace.

In instances where the public agency having jurisdiction determines that extreme danger or menace to the occupants or the public health exists, that agency may order immediate correction of such condition to be made or, if the circumstances warrant, may order the occupants to vacate the premises. If any person so notified, neglects or refuses to comply with an order of the agency, the agency may then declare the premises unfit for human habitation by issuing to the occupants and the owner or operator a written order to vacate the premises within such time as the authority may deem reasonable, and a placard prohibiting continued occupancy or re-occupancy may be conspicuously posted on the premises.
(Code 1977, § 13:204.9)

Sec. 8-64--100. Reserved.

* **Cross References:** Fire and Health departments, § 2-301 et seq. and § 2-311 et seq.

DIVISION 4. RESPONSIBILITIES OF OWNERS, OPERATORS AND OCCUPANTS

Sec. 8-101. Utilities.

No owner, operator or occupant shall cause any service equipment or utility which is required by this article to be removed, shut off or discontinued for any occupied dwelling let or occupied by him/her, except for such temporary interruption as may be necessary while actual repairs or alterations are in process, or during temporary emergencies unless otherwise allowed by law.
(Code 1977, § 13:206.8(e))

Sec. 8-102. No Transfer of Responsibility.

A contract effective between owner and operator, operator and occupant or owner and occupant, with regard to compliance under this article shall not relieve any part of his/her direct responsibility under this article. (Code 1977, § 13:206.8(g))

Sec. 8-103. Notice of maximum occupancy.

Every owner or operator shall advise the occupant in writing either by insertion in the lease between the parties, or otherwise, of the maximum number of occupants permitted in the occupied premises in accordance with Section 8-151, IPMC Section 404.5. (Code 1977, § 13:206.8(h))

Sec. 8-104. Public Nuisance.

No owner, operator or occupant shall cause or let a property to become a Public Nuisance. For purposes of this Chapter, “public nuisance” shall mean the following:

- (a) The physical condition, or use of any premises regarded as a public nuisance at common law.
- (b) Any physical condition, use or occupancy of any premises or its appurtenances considered an accessible nuisance to children, including, but not limited to abandoned wells, shafts, basements, excavations, and unsafe fences, structures or improperly secured buildings.
- (c) Any premises which have unsanitary sewerage or plumbing facilities.
- (d) Any premises designated as unsafe for human habitation or use.
- (e) Any premises from which the plumbing, heating, and/or facilities required in this chapter have been removed, or from which utilities have been disconnected, destroyed, removed, or rendered ineffective, or the required precautions against trespassers have not been provided.
- (f) Any premises which are manifestly capable of being a fire hazard, or are manifestly unsafe or unsecure as to endanger life, limb, or property.
- (g) Any premises which are unsanitary, or which are littered with rubbish, garbage, tires or appliances.
- (h) Any structure or building that is in a state of dilapidation, deterioration, or decay; damaged by fire to the extent as not to provide shelter, in danger of collapse or failure and is dangerous to anyone on or near the premises.

Sec. 8-105. Lead Paint.

It will be the responsibility of the owner or operator to abide by the requirements of the New Hampshire Lead Paint Poisoning Prevention and Control Act (RSA 130-A et seq.)

Sec. 8-106. Vacant Buildings.

Every person or entity owning or having charge of or control of any vacant building shall remove all combustible waste and refuse therefrom and lock, barricade, or otherwise secure all windows, doors and other openings in the building to prohibit entry by unauthorized persons.

Exception: This requirement shall not apply to vacation or resort facilities or buildings being used on a seasonal basis or the temporary vacancy of a building for tenant change or remodeling purposes.

Sec. 8-106.1 Sprinklers.

Vacant buildings shall maintain all required sprinklers and standpipe systems, and the associated water-flow, and sprinkler supervisory alarm systems in service. *Exception: As approved by the authority having jurisdiction.*

Secs. 8-107-125 Reserved.

DIVISION 5. CERTIFICATES OF COMPLIANCE

Sec. 8-126. Certificate of Compliance Required.

It shall be unlawful for anyone to rent, offer for rent, or allow any person to occupy any dwelling, dwelling unit, or condominium unit (used as a rental unit) without a Certificate of Compliance or transfer permit unless the building is exempt.

Sec. 8-127. Applicability.

Certificate of Compliance Requirements will apply to the following:

1. Non-owner occupied two family properties containing two (2) dwellings
2. All multi-unit properties having three (3) or more dwellings
3. Condominium complexes having two (2) or more units for rent/lease

Certificate of Compliance Requirements will not apply to the following:

1. Single family homes
2. Owner occupied properties containing two dwellings
3. Hospitals, nursing homes, board and care facilities and prisons

Sec. 8-128. Initial Start-up of Certificate of Compliance Program.

The Certificate of Compliance program will begin on May 1, 2006. The Code Enforcement Division will notify all owners of the applicable properties of the Certificate of Compliance requirements, as set forth in this ordinance. The notice will explain to the owners their requirement to comply with this ordinance by completing an application (and remitting the associated \$15 application fee) for an **Interim Certificate of Compliance** within 30 days of receipt. The **Interim Certificate of Compliance** will be valid until there is a transfer of property or the property owner is notified of a pending inspection for a four (4) year Certificate of Compliance.

Sec. 8-129. Certificates of Compliance; Term and Renewal.

Following the initial start-up of the inspection program and during the life of the Interim Certificate of Compliance, the Code Enforcement Division will start inspecting the qualifying buildings and issue Certificates of Compliance that will be valid for a period of four (4) years. The expiration date shall be specified in the certificate. The Code Enforcement Division will attempt to notify the owner of the expiration by regular mail to be sent to the last known address at least 60 days prior to the expiration of any certificate. Upon being notified, the owner shall apply for a renewal of the Certificate of Compliance at least 30 days prior to the expiration date. This notice, or lack thereof, does not relieve the owner of the responsibility to renew the certificate before the expiration date.

Sec. 8-130. Application for Certificate.

Prior to the expiration date of a Certificate of Compliance, the owner(s) of each building containing rental property shall file a completed application for a Certificate of Compliance, including the fee required by this subchapter, with the Code Enforcement Division. Each condominium unit, if a rental unit, shall require a separate application. Application forms shall be available at Code Enforcement Division Offices. Failure to comply with this provision will result in a \$250 fine per Chapter 18, Section 20 of the Code Enforcement Ordinance.

Sec. 8-131. Inspections authorized.

The Fire Chief, Health Officer, Code Enforcement Officer and City Manager and/or their designee are hereby authorized and directed to conduct inspections to determine the condition of qualifying two-family buildings, multi-family dwelling units, condominium units (used as a rental units) and premises located within the city in order that he/she may perform his/her duty of safeguarding the health and safety and general welfare of the occupants of rented/leased dwellings and of the general public. (Code 1977, § 13:203.1)

Sec. 8-132. Inspection of Premises.

Following receipt of an application for a Certificate of Compliance, an inspection of the premises shall be conducted to determine compliance with the provisions of this chapter. After the inspection, the Division shall:

- (A) Issue a Certificate of Compliance if the premises comply with all provisions of this chapter; or
- (B) Issue a violation notice if the premises do not comply with all provisions of this chapter. The notice shall list all violations, order their correction within a specific time period and establish re-inspection requirements and a date for reinspection.

Sec. 8-133. Reinspection Where Violations Found.

On or before the date specified in a violation notice, the owner shall cause the correction of all violations. If, on reinspection, the premises comply with all provisions of this chapter, a Certificate of Compliance shall be issued. If, on re-inspection, the premises do not comply with all provisions of this chapter, the Division may schedule a subsequent inspection or initiate enforcement action per Section 8-142 or as outlined in Chapter 18, Code Enforcement, of the City's ordinances.

Sec. 8-134. Extension of Term.

If the Division finds that circumstances exist, which make it impossible for the Division to conduct all of the required compliance inspections during an established term, the existing Certificates of Compliance may be extended by issuing an Interim Certificate of Compliance. Such extensions shall be for a period not to exceed four (4) years and shall be applicable to a particular building only if the owner thereof has applied for and received a certificate showing the extended expiration date.

Sec. 8-135. Newly Constructed Rental Property.

In the case of newly constructed rental property for which a certificate of occupancy has been issued by the Fire Prevention Bureau and the Code Enforcement Division, the certificate of occupancy will become the Certificate of Compliance and will be good for four (4) years from the date of issuance.

Sec. 8-136. Transfer of Ownership.

(A) No property, subject to this subchapter as defined in Section 8-127, being rented, offered for rent, or otherwise occupied shall be bought or sold without the property previously having an Interim Certificate of Compliance or a Certificate of Compliance and a Transfer Permit. This section shall not apply to real estate mortgages but shall apply to foreclosure sales, case of mortgage foreclosures, deeds in lieu of mortgage foreclosures, bankruptcy, or other distress sales.

(B) Application forms for a Transfer Permit shall be available at the Code Enforcement Division Office. A separate application shall be required for each two (2) and three (3) family dwelling or condominium units. Such certificates expire on the date that the previous certificate would have expired.

(C) The Division may, in its discretion, issue an Interim Certificate of Compliance, in lieu of a Transfer Permit pursuant to Sec. 8-136(A) of this subchapter. These Interim Certificates of Compliance will be valid for 90 days and contain such reasonable terms and conditions, in accord with guidelines the Division deems proper, and may be issued due to the following circumstances:

(1) In the case of a backlog of applications for Certificate of Compliance resulting in unreasonable delay in transferring ownership;

(2) In other cases where the Division deems that good cause exists for the issuance of an Interim Certificate of Compliance.

Sec. 8-137. Transfer Permits.

(A) Applications for transfer permits shall be on forms prepared by the Division, shall contain such information as is required by the Division and shall ordinarily be signed by all sellers and buyers.

(B) In the case where the building has not had a previous inspection, but holds an Interim Certificate of Compliance, and the owner wants to sell the building, the owner will need to apply for a transfer permit and have the inspection completed and any defects found in the building corrected prior to the sale of the building. The transfer permit will be issued after the inspection is completed. The new owner will need to apply for a Certificate of Compliance after the property is purchased with no further inspections to be carried out.

(C) If a seller is unable to correct the problems found in a building to be sold, a conditional transfer permit can still be issued which will list all of the defects to be corrected and an acceptance and commitment statement be signed by the purchaser that all corrections and final inspection will be made within 90 days of the transfer of property or

as negotiated with the Code Enforcement Officer. After the defects are corrected, the new owner will need to apply for a Certificate of Compliance within 10 days of the final inspection.

(D) Failure to comply with the above provisions will result in a \$250 fine for both the seller and the buyer per Chapter 18, Section 20 of the Code Enforcement Ordinance.

Sec. 8-138. Rental Assistance.

No owner of rental property where rental assistance is provided by any city, county, or state agency shall rent the same without applying and obtaining a Certificate of Compliance.

Sec. 8-139. Public records.

All applications, permits, certificates, or other documents filed or maintained by the Division pursuant to this subchapter are public records and are available for inspection during regular business hours.

Sec. 8-140. Special Inspections.

On request of owners, prospective purchasers, real estate brokers, financial institutions, housing agencies, or others with a legitimate interest, the Division may inspect or re-inspect rental property other than as required in this subchapter. Certificates of Compliance shall be issued on such terms as the Division determines to be proper.

Sec. 8-141. Fees; Exemptions.

The following fees shall be charged by the Division:

- (1) *Application*: \$15 per building as part of each application for a Certificate of Compliance.
- (2) *Inspection*:
 - (a) Dwelling unit: \$25 per unit for each inspection to determine compliance.
- (3) *Reinspection*:
 - (a) First reinspection - no charge.
 - (b) Second reinspection - \$20.
 - (c) After a second reinspection, the fee shall increase by \$10 for each subsequent reinspection.
- (4) *Unaccompanied inspection/re-inspection*: \$30 per inspection/re-inspection if the building owner or his/her representative is not present unless such arrangement has been agreed to in advance.
- (5) *Replacement of certificate and permit*: \$15 per document for replacing an existing Certificate of Compliance, Interim Certificate of Compliance, or transfer permit.
- (6) *Transfer Permit*: Each application for a transfer permit:
 - (a) \$15 per building as part of each application
 - (b) \$25 per unit for each inspection
 - (c) Each unit in excess of eight units shall be charged an additional \$15 per unit.

- (7) *Special inspection:* A minimum of \$60 for each inspection and \$15 per dwelling unit for each additional unit after the fourth such unit.
- (8) *Extended term:* \$25 per certificate to extend the expiration date of a certificate pursuant to an action of the Board.

Exemptions. No fee shall be charged under this subchapter for any residential rental property that is owned by the state, the county, the city, the Berlin Housing Authority, or any agency or facility licensed by the state. Further, no fee shall be charged for student dormitories, fraternal, charitable, or other nonprofit organizations which are inspected pursuant to the requirements of the U.S. Department of Housing and Urban Development or state agencies.

Sec. 8-142. Penalty

Any person, firm or corporation who violates any provision of this chapter for which another penalty is not specifically provided shall, upon conviction, be subject to a fine not exceeding the maximum allowed by R.S.A. 47:17 or other law. Each day a violation occurs or continues shall constitute a separate offense.

Secs. 8-143-150 Reserved

DIVISION 6. MINIMUM STANDARDS

Sec. 8-151. Established.

The standards established in this division shall be considered the minimum standards for use and occupancy of all dwellings, including commercial properties, under this article. If any of these standards should conflict with any other section of any ordinance or statute, the ordinance or statute requiring the higher standard or the stricter regulation shall prevail, and shall be the minimum standard. (Code 1977, § 13:206)

Additions, insertions, deletions and changes:

**The following are amendments to the *International Property Maintenance Code, 2000* edition, and are adopted as part of the minimum standards and practices.
All sections referred to in Sec. 8-151 are to the Section numbers of the Maintenance Code. (IPMC)**

IPMC Sec. 101.1. Title

Insert: “Berlin, New Hampshire”

IPMC Sec. 102.3. Application of other codes

Replace: “International Fuel Code” with “NFPA 54 National Fuel Gas Code”, “ICC Electrical Code” with “National Electric Code”, “NFPA 73 for Existing Construction” and “International Zoning Code” with “Zoning Ordinance of the City of Berlin, New Hampshire”.

IPMC Sec. 103.

Replace: “Department of Property Maintenance Inspection” with “Code Enforcement Division”

IPMC Sec. 103.4 Restriction of employees

Replace: “Section 111” with “Section 8-36”

Insert IPMC Sec. 103.6 Fee Table:

| Item: | Charge: | Exceptions | |
|-----------------------------------|----------------|--|--|
| Site Compliance Re-Inspections | \$75 per visit | Except as detailed in Sec. 8-141 A-3 for Certificates of Compliance for rental properties. | |

Delete IPMC Sec. 106.2. Notice of Violation.

IPMC Sec. 107. Notices and Orders.

Delete Sections 107.1-.3

Add Section 107.4 “and Chapter 18 of the City Code”

IPMC Sec. 111. Means of Appeal.

Delete Sections 111.1- 111.8

IPMC Delete Sec. 202 General Definitions.

IPMC Sec. 303.14. Insect Screens.

Insert: “April 1 to November 1”

Add IPMC Sec. 304.7. Cooking Equipment.

No owner, operator or occupant shall furnish or use any cooking equipment which does not comply with the following minimum standards:

(1) *Construction, installation and maintenance.* Every piece of cooking equipment, located within a dwelling unit, shall be so constructed and installed that it will function safely and effectively and shall be maintained in sound working condition.

(2) *Prohibited equipment.* Portable cooking equipment employing flame and using any flammable liquids or gas as fuel is prohibited from being used as an indoor cooking and heat source.

(Code 1977, § 13:206.7)

Add IPMC Sec. 307. Substandard Conditions--Structural elements.

Any dwelling which has any or all of the following defects of structural elements shall be deemed unfit for human habitation:

- (1) *Interior walls and vertical structural members.* Any dwelling originally designed to have plumb or straight walls whose interior walls or other vertical members list, lean or buckle to such an extent that a plumb line passing through the center of gravity falls outside of the middle third of its base shall be deemed unfit for human habitation.
- (2) *Supporting members and nonsupporting walls.* Any dwelling which, exclusive of the foundation, shows thirty-three (33) percent or more of damage or deterioration of the supporting member or members, or fifty (50) percent of damage or deterioration of the nonsupporting enclosing or outside walls or covering shall be deemed unfit for human habitation.
- (3) *Floor and roof loads.* Any dwelling which has improperly distributed loads upon the floors or roofs or in which the same are overloaded, or which have insufficient strength to be reasonably safe for the purpose used shall be deemed unfit for human habitation.
- (4) *Damage by fire, wind or other causes.* Any dwelling which has been damaged by fire, wind or other causes so as to have become dangerous to life, safety or the general health and welfare of the occupants or the people of the city shall be deemed unfit for human habitation.
(Code 1977, § 13:206.5)

Add IPMC Sec. 308. Substandard Conditions--Nonstructural elements.

Any dwelling which has any or all of the following general substandard conditions shall be deemed unfit for human habitation.

- (1) *Dilapidated, decayed, unsafe or unsanitary.* Any dwelling which has become or is so dilapidated, decayed, unsafe, unsanitary, or which utterly fails to provide the amenities essential to decent living, or which is likely to cause sickness or disease, so as to work injury to the health, safety, or general welfare of those living therein shall be deemed unfit for human habitation.
- (2) *Inadequate light, air and sanitation.* Any dwelling having light, air and sanitation facilities which are inadequate to protect the morals, safety or general welfare of human beings who live or may live therein shall be deemed unfit for human habitation.
- (3) *Inadequate egress.* Any dwelling having inadequate facilities for egress in case of fire or panic or those having insufficient stairways, elevators, fire escapes, or other means of communication shall be deemed unfit for human habitation.
- (4) *Insecure parts.* Any dwelling which has parts thereof which are so attached that they may fall and injure members of the public or property shall be deemed unfit for human habitation.
- (5) *Unsafe, unsanitary or dangerous to public.* Any dwelling which because of its condition is unsafe, unsanitary, or dangerous to the health, morals, safety or general welfare of the people of this city shall be deemed unfit for human habitation.
(Code 1977, § 13:206.6)

Add IPMC Sec. 404.8. Prohibited Uses.

No person shall occupy or let to be occupied any dwelling unit which opens into a paint shop, paint store, vulcanizing shop, public garage, or any place where paint, varnishes, lacquers, thinners, gasoline, or petroleum products are stored. Common walls or ceilings separating such usage from dwelling units shall have no vent or openings whereby fumes or vapors may pass into the dwelling unit.

Add IPMC Sec. 404.9. Basement Dwellings

No person shall let to be occupied a room in any cellar or basement for use as a habitable room or rooming unit unless the following standards are met:

- (A) The ceiling shall have a clear inner height of at least seven feet, six inches and shall be at least three feet, six inches above the surface of the street or ground outside of or adjoining the room.
- (B) The floors and walls shall be waterproof and damp-proof and the room or rooms shall be well drained and dry.
- (C) There shall be one or more windows, the combined total sash area of which shall not be less than eight square feet, or one tenth (1/10) of total floor area, whichever is greater, which windows shall open readily for purposes of ventilation directly to the outside air, except that an approved method of mechanical ventilation may be substituted therefore.
- (D) All basement dwelling units shall have two means of egress.

Add IPMC Sec. 404.10. Waiver.

The Division, on application from the owner or occupant, may waive the provisions of § 404 of this subchapter for a period not to exceed six months if it determines that there is not suitable and affordable alternative housing for the occupants in the area and enforcement of the provisions would work a substantial hardship on the occupants.

IPMC Chapter 6 in IPMC Commentary Edition

Replace: “International Fuel Code” with “NFPA 54 National Fuel Gas Code”.

Replace IPMC Sec. 602.2. Residential Occupancies.

Replace with: Dwellings shall be provided with heating facilities capable of maintaining room temperatures of 68°F (20°C) when the outside temperature is minus -20°F (-29°C) in all habitable rooms, bathrooms and toilet rooms. Cooking appliances shall not be used to provide space heating to meet the requirements of this section.

Exception: When the outdoors temperature is below -20°F (-29°), maintenance of the minimum room temperature shall not be required provided that the heating system is operating at its full design capacity.

Delete IPMC Sec. 602.3. Heat supply.

Add IPMC Sec. 602.3.1. Portable Heaters.

Portable heating equipment employing a flame and using any flammable liquids or gas does not meet the standards of this section and is prohibited. (Code 1977, § 13:206.2)

IPMC Sec. 602.4. Occupiable work spaces.

Insert: “November 1 to April 30”

Add IPMC Section 603.7. Storage Fuel Tanks.

It shall be the duty of the owner of premises let to be occupied in whole or in part as a dwelling unit to insure that all fuel tanks be provided with means for venting and that such tanks installed comply with NFPA 30, NFPA 31 and the State Fire Code and maintained so as not to be a hazard to the premises served or surrounding property and conform with the codes and ordinances of the State of New Hampshire as enforced by the Code Enforcement Division and the Fire Prevention Bureau of the Berlin Fire Department.

IPMC Sec. 604.2. Service

Replace: “ICC Electrical Code” with “National Electric Code and NFPA 73 For Existing Construction”.

IPMC Chapter 7 and in IPMC Commentary Edition

Replace: “International Fire Code” with “NH State Fire Code” and “International Fuel Code” with “NFPA 54 National Fuel Gas Code”.

Add: IPMC Section 704.4

- (A) Every single family dwelling which is built or substantially rehabilitated after January 1, 1982, shall be equipped with an automatic fire warning device (RSA 153:10-a, II).
- (B) Existing one and two family dwelling units (buildings) constructed or renovated prior to 1987, approved smoke alarms powered by batteries will be permitted. (NFPA 72 (2002) Section 11.5.1.1).
- (C) In buildings constructed or renovated after 1987, devices must be powered by house electricity, have a battery back-up and listed by a testing laboratory approved by the state fire marshal. (Chapter Saf-C 6000 STATE FIRE CODE)